

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 180 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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AZIZ FAKIR GANAI

Versus

STATE OF GUJARAT

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Appearance:

MR MJ BUDDHBHATTI for the appellant  
Mr.S.R.Divetia, LAPP for Respondent No. 1  
NOTICE NOT RECD BACK for Respondent No. 2

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 06/02/97

ORAL JUDGEMENT (N.J.Pandya,J.)

The accused-appellant, along with two more, were facing trial in Sessions Case No.56 of 1988 for offence

under Sec.20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter for brevity referred to as NDPS Act). Original accused no.3 died during the pendency of the matter before the trial Court and therefore, the case was proceeded against only two accused. At the end of the trial, the learned Additional Sessions Judge, Surendranagar, by judgment dated 19-1-1990 was pleased to hold accused no.2 guilty and had awarded R.I. for 10 years and a fine of Rs.1 lakhs and in default to undergo R.I. for 2 years. It is this convict accused, who has filed the present appeal.

2. The case was to the effect that Customs Officer from Mauli had received reliable information about accused no.1 harbouring persons trafficking in Narcotics. Raid was, therefore, conducted on 31st December 1987 by Customs Officers in presence of panchas.

3. In the course of the raid from the deceased accused and the present appellant-accused, their luggage inform of trunk was found and was got opened after obtaining a key from the deceased-accused. A plastic bag was found with powder weighing 13 kgs. and 600 grams and it appears to be charas.

4. On chemical analysis, in fact, it turned out to be charas and therefore, the case proceeded against them. In the meantime, on the day of the raid itself, before the Superintendent of Customs, statement under Sec.108 of the Customs Act of the accused was recorded and present-appellant-accused had given statement as per exh.35, page 179 to 189 of the paper book. He has clearly confessed therein about having possession of said Narcotic.

5. In this background, when the trial resulted into conviction, in our opinion, the accused-appellant in the appeal is not able to dislodge that conclusion of the learned trial Judge.

6. Initial attempt was made that requirements of Sec.50 are not fulfilled. However, when the statement is before the Superintendent of Customs, who is a gazetted Officer, obviously, there is no violation with regard to this. The confessional statement Exh.35 was never retracted till the further statement of the accused came to be recorded under Sec.313 of Cr.P.C. Coupled with this, the testimony of the Custom Inspector Mr. Rathod, Exh.14, page 71, clearly reveals that in his presence accused no.2 and said deceased had pointed out the trunk to be their luggage and after obtaining key from the

deceased accused, it was got opened with the aforesaid result. In our opinion, the charge is brought home to the accused. There is, therefore, no substance in the appeal. It is dismissed. The order of the trial Court is confirmed.

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